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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/517,116

12/03/2004

Helmut Sieber

2002CH004

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7590

05/21/2009

CLARIANT CORPORATION  
INTELLECTUAL PROPERTY DEPARTMENT  
4000 MONROE ROAD  
CHARLOTTE, NC 28205

EXAMINER

KHAN, AMINA S

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

05/21/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                       |  |
|------------------------------|--------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/517,116 | <b>Applicant(s)</b><br>SIEBER, HELMUT |  |
|                              | <b>Examiner</b><br>AMINA KHAN        | <b>Art Unit</b><br>1796               |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This office action is in response to applicant's arguments filed on February 12, 2009.
2. Claims 1-6 and 8-17 are pending. Claim 7 has been cancelled.
3. Claims 1, 2 and 14 stand rejected under 35 U.S.C. 102(b) as being anticipated by Von der Eltz et al. (US 3,681,005) for the reasons set forth in the previous office action.
4. Claims 8-12 and 16 stand rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mach et al. (2001/0004780) for the reasons set forth in the previous office action.
5. Claims 1-6 stand rejected under 35 U.S.C. 103(a) as obvious over Mach et al. (2001/0004780) in view of Schwander (US 4,221,911) for the reasons set forth in the previous office action.
6. Claim 13 stands rejected under 35 U.S.C. 103(a) as obvious over Mach et al. (2001/0004780) in view of Schwander (US 4,221,911) and further in view of Bohler et al. (US 4,439,562) for the reasons set forth in the previous office action.

7. Claim 15 stands rejected under 35 U.S.C. 103(a) as obvious over Mach et al. (2001/0004780) in view of Bohler (US 4,439,562) for the reasons set forth in the previous office action.

8. Claim 17 stands rejected under 35 U.S.C. 103(a) as obvious over Mach et al. (2001/0004780) in view of Tucci et al. (US 6,326,015) for the reasons set forth in the previous office action.

9. Claims 1-3 stand rejected under 35 U.S.C. 103(a) as obvious over Dreyer et al. (US 3,096,319) for the reasons set forth in the previous office action.

10. Claims 1-3 stand rejected under 35 U.S.C. 103(a) as obvious over Salathe et al. (US 4,444,564) for the reasons set forth in the previous office action.

### ***Response to Arguments***

11. Applicant's arguments filed regarding Von der Eltz et al. (US 3,681,005) have been fully considered but they are not persuasive. The applicant argues that Von der Eltz et al. teach the acid dye metal complexes are used to dye wool and not polyester. The examiner respectfully disagrees. Von der Eltz et al. in Example 5 clearly teach contacting a wool and polyester blend with a dispersion dyestuff and a chromium complex in which the polyester and wool are evenly dyed. Von der Eltz clearly teaches

“On both the polyester and the wool portion of the mixed tissue a uniform red dyeing was obtained” (column 5, lines 30-70) and the “1:2 complex metal compounds of azo dyestuffs insoluble or sparingly soluble in water” (column 1, lines 15-25). Accordingly, the rejections are maintained.

12. Applicant's arguments filed regarding Mach et al. (2001/0004780) and Mach et al. in view of Tucci et al. (US 6,326,015) have been fully considered but they are not persuasive. The applicant argues that Mach et al. are directed to spun-dyed material comprising synthetic fibers and one of ordinary skill would not be motivated to use the colorants of paragraph (0012) into the mixture of claims 8-12 and 16. The examiner respectfully disagrees. Mach et al. clearly teach dyeing or printing spun dyed fibers comprising polyester and teaches that the dyed used for spin dyeing may be used for printing (paragraphs 0010-0015 and example 3). The examiner asserts that Mach et al. clearly teach contacting a dyed polyester with dyes which may be chosen from Solvent Brown 53 and Disperse Violet 57 and that this would inherently provide the improved lightfastness as instantly claimed because Mach et al. teach treating similar dyed fabrics with similar transition metal complexes which would be expected to impart similar lightfastness properties to the fabric. Also Mach et al. clearly teach that after cross-dyeing the final hue should be very close to the spin-dyeing hue. With respect to this teaching it would be obvious to one of ordinary skill in the art to use the same dyes as used in spin dyeing to ensure a very close hue to the spin-dyeing hue. Furthermore, the claims are just directed to a dye mixture of a disperse dye and a transition metal

coordination complex and paragraphs (0011) and (0012) clearly teaches the mixture of these dyes and printing the spun dyed fabrics with the same dyes as used in spin dyeing (paragraph 0014). Applicant's arguments regarding the application of the dye during thermosol, exhaust or continuous dyeing are moot since the claim is directed to a dye mixture and dyed article and not to the method of dyeing. Accordingly, the rejections are maintained.

13. Applicant's arguments filed regarding Mach et al. (2001/0004780) in view of Schwander (US 4,221,911) have been fully considered but they are not persuasive. The applicant argues that Schwander does not teach the functional equivalence of spin dyeing, exhaust and thermosol methods and only teaches the possible use of dyes of formula (I) in these methods. The examiner respectfully argues that Schwander is simply relied upon to demonstrate that conventional dyeing processes for dyeing polyester with sparingly water soluble dyes (disperse dyes) are spin dyeing, thermosol dyeing, cross dyeing, printing and exhaust dyeing (column 8, lines 24-68). The examiner asserts that Mach et al. clearly teach contacting a dyed polyester with dyes which may be chosen from Solvent Brown 53 and Disperse Violet 57 and that this would inherently provide the improved lightfastness as instantly claimed because Mach et al. teach treating similar dyed fabrics with similar transition metal complexes which would be expected to impart similar lightfastness properties to the fabric. Also Mach et al. clearly teach that after cross-dyeing the final hue should be very close to the spin-dyeing hue. With respect to this teaching it would be obvious to one of ordinary skill in

the art to use the same dyes as used in spin dyeing to ensure a very close hue to the spin-dyeing hue. One of ordinary skill would have been motivated to substitute a conventional process for cross-dyeing polyester with disperse dyes by either thermosol or exhaust methods because it is known to do so in the art. Furthermore, Mach et al. invite the inclusion of printing or cross-dyeing with instantly claimed disperse dyes and transition metal complexes. Accordingly, the rejections are maintained.

14. Applicant's arguments filed regarding Mach et al. (2001/0004780) in view of Schwander (US 4,221,911) and further in view of Bohler et al. (US 4,439,562) and Mach in view of Bohler have been fully considered but they are not persuasive. The applicant argues that spin dyeing polyester filaments and spinning mass-dyed polyester are vastly different and one of ordinary skill would not be motivated to combine these references. The examiner respectfully disagrees. The examiner argues that applicant's arguments are conclusory and no evidence has been provided to support such a conclusion. Applicants' arguments are conclusory statements not supported by factual evidence, see *In re Lindner*, 457 F.2d 506, 173 USPQ 356 (CCPA 1972). The examiner further asserts that spin dyeing is functionally equivalent to methods of dyeing the fibers after formation as evidenced by Schwander et al. (columns 8 and 9) and Bohler et al. teach spin dyeing polyester with compounds of formula (I) to produce polyesters with good fastness to light and wetness (column 1, lines 1-30; column 3, lines 55-59). Accordingly, the rejections are maintained.

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15. Applicant's arguments filed regarding Dreyer et al. (US 3,096,319) have been fully considered but they are not persuasive. The applicant argues that Dreyer et al. do not teach improving lightfastness as instantly claimed. The examiner respectfully disagrees. Dreyer et al. clearly teach contacting polyester with a dyestuff and a chromium complex (column 2, lines 29-60; column 3, lines 25-30). The examiner asserts that Dreyer et al. clearly teach contacting a polyester with a dye and a chromium complex and that this would obviously provide the improved lightfastness as instantly claimed because Dreyer et al. teach treating similar dyed fabrics with similar transition metal complexes which would be expected to impart similar lightfastness properties to the fabric. Furthermore, Dreyer teaches that polyesters can be effectively dyed by these metal complexes in aqueous suspensions for the benefit of great color strength. Accordingly, the rejections are maintained.

16. Applicant's arguments filed regarding Salathe et al. (US 4,444,564) have been fully considered but they are not persuasive. The applicant argues that Salathe et al. do not teach improving lightfastness as instantly claimed. The examiner respectfully disagrees. Salathe et al. clearly teach contacting polyester with a dyestuff and a chromium complex (column 2, lines 50-65; column 24, lines 40-60). The examiner asserts that Salathe et al. clearly teach contacting a polyester with a dye and a chromium complex and that this would obviously provide the improved lightfastness as instantly claimed because Salathe et al. teach treating similar dyed fabrics with similar transition metal complexes which would be expected to impart similar lightfastness



properties to the fabric. Furthermore, Salathe teaches that polyesters can be effectively dyed by these metal complexes in aqueous for the benefit of great level dyeings with good fastness. Accordingly, the rejections are maintained.

### ***Conclusion***

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMINA KHAN whose telephone number is (571)272-5573. The examiner can normally be reached on Monday through Friday, 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/  
Primary Examiner, Art Unit 1796

/Amina Khan/  
Examiner, Art Unit 1796  
May 20, 2009